



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Hall/McCabe Realty, Inc.

File: B-272875

Date: October 29, 1996

Judith K. McCabe for the protester.

W. Graham Moses, Esq., Department of Housing and Urban Development, for the agency.

John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation required bidders to submit price spreadsheet covering all of the work to be performed under fixed-price contract, but the spreadsheet was not listed on the bid schedule and was to have no effect upon contract award, a failure to submit the spreadsheet with the bid does not render the bid nonresponsive.

DECISION

Hall/McCabe Realty, Inc. protests the award of a contract to Gulf Coast Brokers/ERTI under invitation for bids (IFB) No. 003-96-063, issued by the Department of Housing and Urban Development (HUD) for real estate asset manager (REAM) services.

We deny the protest.

The IFB contemplated award of a fixed-priced contract for management and related services for single family properties owned or in the possession of HUD in the Pensacola, Florida area for 1 year with 2 option years. The IFB at section B.3.A., required bidders to insert a fee for the base year and for each of the option years for each HUD-owned property assigned to the contract. Under sections B.3.B and B.3.C, bidders were required to insert a per month, per property price for custodial duties and a per lot price for work required on vacant lots. The IFB stated that the sum of those five prices would be used to determine the low bidder under the IFB.

Section L-8 of the IFB, "Pricing Information," included a pricing spreadsheet calling for bidders to set forth their costs for the base and each option year for numerous items, including direct labor, fringe benefits, and other costs such as initial inspections, initial cleanups, securing properties, defective paint inspections and reports, initial and routine ground maintenance, photographs, subcontracting,

administrative costs, rent collection, tenant complaint investigations, and eviction actions. Concerning this information, section L-8 stated:

"The following is provided to help the bidder consider in pricing items that the government will expect the eventual contractor to pay for out of his/her management price per property. This pricing spread sheet must be returned with and equal the bid prices provided in section B.3.A."

Bids were submitted by the protester and Gulf Coast. Gulf Coast's bid, as submitted, did not include the section L-8 price spreadsheet. Since Gulf Coast's bid included the prices in section B, the agency reports that the contracting officer decided that the absence of the spreadsheet was a minor, waivable informality in accordance with Federal Acquisition Regulation (FAR) § 14.405.¹

Based on the section B prices, Gulf Coast's bid was the apparent low bid. However, because that bid was approximately 61 percent below Hall/McCabe's bid, the agency requested that Gulf Coast verify its bid. As part of the verification, the agency requested that Gulf Coast submit the section L-8 price spreadsheet as a means of ensuring there was no error in the firm's price and that the firm understood the requirements of the contract. Based on the verification, the contracting officer determined Gulf Coast's bid was not mistaken and not so low as to prevent satisfactory performance. After a determination that Gulf Coast was responsible, the contract was awarded to that firm as the low, responsive and responsible bidder.

Hall/McCabe first argues that Gulf Coast's bid should have been rejected as nonresponsive. Hall/McCabe notes that the IFB required bidders to submit the completed spreadsheet with their bids and maintains that the spreadsheet was a material part of the bid since the purpose of that information was to confirm to the government that the bidder understood the costs of complying with the contract. The protester also argues that the spreadsheet was a material part of the bid because the IFB stated that award would be made to the "low, responsive, responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government considering only price." According to

¹FAR § 14.405 defines a minor informality or irregularity as:

"[O]ne that is merely a matter of form and not of substance . . . some immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders."

Hall/McCabe, since Gulf Coast's bid did not include the spreadsheet, it did not conform to the solicitation and therefore was not responsive. Hall/McCabe also argues that the agency improperly permitted Gulf Coast to make its nonresponsive bid responsive by allowing the firm to submit the spreadsheet after bid opening in violation of the FAR, which only permits correction of bids that are responsive as submitted.

A bid, to be responsive, must constitute an unequivocal offer to provide the exact items or services called for in the IFB, so that government acceptance of the bid will legally bind the bidder to perform the contract in accordance with all the material terms and conditions. See Delco Indus. Textile Corp., B-223968, Oct. 29, 1986, 86-2 CPD ¶ 490. As a general rule, a bid must be rejected as nonresponsive if, as submitted, it does not include a price for every item requested by the IFB. This rule reflects the legal principle that a bidder who has failed to submit a price for an item generally cannot be said to be obligated to furnish the item. D.H. Kim Enters., Inc., B-261423, Sept. 21, 1995, 95-2 CPD ¶ 145. A bid also should be rejected as nonresponsive where prices required on a solicitation's bid schedule are missing and are determinative of which bid was low, or where the missing prices are necessary to calculate payments to the contractor. See, e.g., Allbrite Office Cleaning, Inc., B-257188, June 10, 1994, 94-1 CPD ¶ 363, GTA Containers, Inc., B-249327, Nov. 3, 1992, 92-2 CPD ¶ 321; Lioncrest, Ltd., Inc., B-221026, Feb. 6, 1986, 86-1 CPD ¶ 139.

In this case, by the express terms of the IFB, the pricing spreadsheet was to serve none of these purposes; indeed, the spreadsheet was to have no effect on the award or performance of the contract. The solicitation advised that the low bidder was to be determined based on the sum of the five prices inserted by the bidders in section B of their bids. The spreadsheet prices also were to have no effect on payments under the contract; the IFB directed that payments also were to be based on the section B prices. The spreadsheet was requested solely "to help the bidder consider in pricing items that the Government will expect the eventual contractor to pay for out of his/her management price per property" and, by its own terms, was to have no bearing on any legal commitment of the bidder. In other words, bid prices for the five line items in the section B schedule legally obligated the bidder to perform all of the work required under the contract, including the options and the work on vacant lots and the custodial work--a bid's failure to contain the spreadsheet does not mean, as the protester contends, that such a bid fails to provide an unequivocal offer to provide the required work. See D.H. Kim Enters., Inc., *supra*. Accordingly, since Gulf Coast's deviation from the exact requirements of the IFB did not have a material effect on its legal obligations, there is no basis for viewing Gulf Coast's bid

as nonresponsive and the deviation could be waived as a minor informality.² See Fire Sec. Sys., Inc., B-259076, Mar. 2, 1995, 95-1 CPD ¶ 124.

Hall/McCabe also argues that Gulf Coast's price is so low that the government should have questioned whether that firm has the ability to meet the requirements of the contract. This allegation does not present a valid basis for protest. A bidder or offeror, in its business judgment, properly may decide to submit a price that is extremely low. Diemaster Tool, Inc., B-238877, Apr. 5, 1990, 90-1 CPD ¶ 375. An agency's decision that the contractor can perform the contract at the offered price is an affirmative determination of responsibility which we will not review absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.5(c) (1996); JWK Int'l Corp., B-237527, Feb. 21, 1990, 90-1 CPD ¶ 198. There has been no such showing here.

Finally, Hall/McCabe notes that at a pre-bid conference, an agency representative stated that the number of properties in inventory listed in the IFB had changed. The protester complains that it asked for but was refused a copy of the minutes to the conference and that no amendment was issued concerning the change in the inventory. HUD reports that at the pre-bid conference, a representative of Hall/McCabe, the incumbent, informed the agency that the IFB should have stated that there were 17 properties in the inventory, instead of 25. While the agency concedes that it should have prepared and distributed minutes of the pre-bid conference to all prospective bidders, the agency argues that the change was not so significant as to prejudice any bidders.

We agree. As the incumbent, Hall/McCabe knew the number of properties in the inventory so we do not see how it was prejudiced by the agency's failure to formally announce the change in the number of properties listed in the IFB. To the extent that Hall/McCabe argues that Gulf Coast's price was skewed by its belief that there were more properties in inventory than was actually the case, as the agency points out, the number of properties in the inventory will change over the course of the contract and the IFB informed bidders that the listed current inventory did not

²Although Hall/McCabe argues that the spreadsheet is a matter of responsiveness because it can be used to determine whether a bid is unbalanced, the agency's concern with respect to unbalancing under this solicitation related to unbalancing between the required items in section B of the schedule. As the IFB stated, "bids reflecting unbalanced pricing for items in B.2 can be rejected as non-responsive." Moreover, as explained above, the absence of the spreadsheet had no impact on the responsiveness of the bid because it was to have no bearing on the legal commitment of the bidder and was to play no role in determining the low bid or in calculating payments under the contract.

represent a projection of the required services. Moreover, in addition to the current inventory total, the IFB listed the number of properties acquired over the past year, the number of properties closed over the past year, the number of vacant lots acquired over the past year, and other information about the incumbent contract; the protester does not argue that any of this information was in error. Under the circumstances, we do not see how the disparity in the inventory number in the IFB could have had any significant impact on the bids.

The protest is denied

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